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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,069	12/15/2003	David Arthur Kuen	KCC 4972.1 (17,515B)	4276
321	7590	07/13/2007		
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			NOTIFICATION DATE 07/13/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

Office Action Summary

Application No.

10/736,069

Applicant(s)

KUEN ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-36 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-36,38-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed April 25, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of claim 1: In response to applicant's arguments against the Rosch, New and Christoffel references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant further argues that the combined teaching of Rosch and Christoffel and New would not meet the claim limitations. This is not persuasive because New teaches releasably and refastenably attaching an absorbent garment (such as that of Rosch with a garment shell) to a waist belt. The teachings of all three references have been addressed in detail in previous Office actions and will not be reiterated here. Applicant further argues that Christoffel does not teach that the bodice of the instant invention is releasably attached to the chassis. The Office has addressed this same argument previously and refers applicant to page 4 of the Office action mailed August 28, 2006 and ¶¶0071-0074 of Christoffel which clearly contradict applicant's repeated argument that Christoffel does to teach releasable attachment of the bodice to the chassis and does provide suggestion to combine with the prior art of Rosch. The combined teaching of Rosch and Christoffel and New meets the claim limitations and thus the rejection of claim 1 is maintained.

Applicants' arguments with regard to independent claim 36 and dependent claims 3-35 and 38-41 have been fully considered but are not persuasive as Applicants' arguments depend

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entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-36 and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosch et al (U.S. Patent No. 6,115,847) in view of Christoffel et al (U.S. Patent Application Publication No. 2002/0087137) as applied to claims 1-11 and 13-41 above, and further in view of New et al (U.S. Patent No. H1440).

With respect to **Claims 1-9,15,16,26-28,34-37,40**: Rosch teaches an active wear trunk garment 110 having a liquid-permeable trunk cover 114 having inner surface 111 and outer surface 113 and a waste containment structure 142 comprising a liquid-impermeable backsheet 158 having a garment-facing surface, a liquid-permeable bodyside liner 156 and absorbent core 160 sandwiched therebetween. ('847, Col. 8, lines 8-16) Trunk cover 114 has front waist, rear waist and crotch regions 131,133,149 as can be seen in Figs. 1-4. Waist elastics 143,145 (collectively, waist belt) are an integral portion of cover 114 in the waist regions 131 and 133 and that garment 110 is joined to said structures. As can also be seen in Figs. 1-4, waste containment structure 142 is disposed generally within trunk garment 110. Rosch teaches that trunk cover 114 is joined to elastic members 143,145 at the waist regions ('847, Col. 10, lines

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45-49), therefore Rosch does not teach that trunk cover 114 is releasably attached at the front and rear waist regions.

Christoffel teaches a girl's swimsuit wherein an absorbent pant/bottom portion 98 is releasably attached to the upper portion/bodice 42 at the front and rear waist areas via hook and loop fasteners 92 to secure the pant portion and upper portion about the waist of the wearer and for greater ease in applying and removing said swimsuit, ('137, ¶¶ 0071-0074) therefore it would be obvious to one of ordinary skill in the art to utilize hook and loop fasteners to releasably attach the outer cover 114 and garment 110 taught by Rosch so as to more easily apply and remove garment 110 as taught by Christoffel.

Neither Rosch nor Christoffel teaches an absorbent assembly that is releasably and refastenably attached to a waist belt. New teaches an absorbent garment that comprises an absorbent assembly and a waist belt wherein the waist belt is releasable and refastenably attached to the assembly. New teaches that such a detachable belt provides a more contoured fit for a user and thus is less noticeable under clothing, therefore it would be obvious to one of ordinary skill in the art to modify the waistbelt taught by Rosch by substituting a detachable belt as taught by New to provide a more comfortable and discreet fit for the user. The combined teaching of Rosch and Christoffel and New would therefore yield an absorbent garment in which the absorbent assembly is releasably and refastenably attached generally at the front and back regions to a waist belt and a garment shell that is releasably and refastenably attached at the front and back waist regions to the waist belt. ('440, Abstract, Col. 9, lines 63-67)

With respect to **Claim 6**: Rosch teaches that waist elastics 143,145 are an integral portion of cover 114 in the waist regions 131 and 133 and that garment 110 is joined to said structures. As can best be seen from Figs. 1-4, the garment 110 is joined in such a way as to be joined to the

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inner surface of a waist belt defined by said elastics, and cover 114 is joined to the outside of said elastic members.

With respect to **Claims 10,38,39,41**: Rosch teaches that waist elastic members 143,145 are bonded in a relaxed, untensioned state to outer cover 114 and subsequently garment 110. The resulting structure is then configured for wear.

With respect to **Claim 11**: Rosch teaches an elongation for the elastic material defining the side panels of garment 110 of between 50-300%. Since the elastic members 143, 145 are joined to the garment in a relaxed state, the elongation for the entire assembly in the waist region will be at least in this range.

With respect to **Claim 12**: Rosch does not teach a particular width for the waist elastics. New teaches a releasable and refastenable waist belt for an absorbent garment having a width of 6-13 cm, or 60-130 mm, which overlaps the range set forth in claim 12. New teaches that such widths prevent twisting or wrinkling that causes red marking of the users skin, therefore it would be obvious to one of ordinary skill in the art to modify the garment 110 taught by the combined teaching of Rosch and Christoffel to have a width in the range taught by New to prevent twisting or wrinkling of the belt. ('440, Col. 10, lines 1-9)

With respect to **Claim 13**: Rosch teaches leg openings defined by seams 187,189 in cover 114. ('847, Col. 11, lines 1-5) As can best be seen in Fig. 4, garment 110 has leg openings spaced apart inwardly from leg openings defined by cover 114.

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With respect to **Claim 14**: Rosch teaches leg elastics for the garment 110. Cover 114 is in the form of swimming trunks and as can best be seen in Fig.4 is designed to hang loosely about the legs of the wearer.

With respect to **Claims 17,21**: As can best be seen in Fig. 4, the crotch region of garment 110 is located inwardly of the crotch region 149 of cover 114 and not attached. Further, Rosch teaches cover 114 is configured as a pair of swimming trunks, wherein said trunks, as stated previously are intended to hang loosely about the legs of the wearer, whereas the garment contains leg elastics to fully encircle the legs of the wearer.

With respect to **Claims 18,19**: As can best be seen in Fig. 4, Rosch teaches that garment 110 has a waist opening defined by waist regions 131 and 133 correspondign to the waist regions of cover 114.

With respect to **Claim 20**: Rosch teaches pant structure 112. ('847, Col. 12, line 5)

With respect to **Claim 22**: As is seen in Fig. 5 taught by Rosch, the absorbent garment 110 is releasably and refastenably engaged along at least a portion of each of the side seams. The front and back panels of trunk 114 are not attached at side seams, therefore when the fasteners seen in Fig. 5 are released or refastened, the garment 110 is released or refastened as a whole.

With respect to **Claims 23,24**: Since Rosch teaches both non-refastenable and releasable/refastenable side seams ('847, Col. 11, lines 1-5, 14,15), though Rosch does not teach using them in combination, it would be obvious to one of ordinary skill in the art to modify

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said side seams so as to contain both releasable/refastenable and non-refastenable portions, for example having a non-refastenable portion located above fasteners 96 on each side seam.

With respect to **Claim 25**: Please see the rejection of claim 1 in addition to the following: Rosch teaches that cover 114 has front panel 115 and back panel 121 having side edges 117 and 119 (front) and 123 and 125 (back). ('847, Col. 10, lines 57-65)

With respect to **Claims 29-31**: Rosch teaches pant structure 112 having left and right side panels 126, 128 respectively that extend from the front waist region 120 to the rear waist region 122. ('847, Col. 12, lines 4-12) Panels 126, 128 are ultrasonically bonded and have non-refastenable seams so as to allow fastening of a front side panel to a corresponding back side panel, thus defining leg openings, as can be seen in Figs. 5, 6. ('847, Col. 12, lines 18-21) As can also be seen in Figs. 5 and 6 pant structure 112 has front and back panel areas in addition to the side panels. In another embodiment shown in Fig. 5, Rosch teaches tape fasteners that are refastenable, thus Rosch teaches that panels 126, 128 could also be releasably and refastenablely attached.

With respect to **Claim 32, 33**: Since Rosch teaches that the side panels are elastomeric and are capable of stretching to between 10-500% of their original length ('847, Col. 8, lines 55-60), the side panels are capable of creating an overlap in the range set forth by applicant in claim 33 (thus also falling within the range set forth in claim 32), in both the cases of non-refastenable and releasable/refastenable seams.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
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July 5, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

